

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 29R
Amend No. _____

Date prepared: March 10, 2009

Council Meeting Date: April 7, 2009

TO: Carl Swenson, City Manager
FROM: Susan J. Daluddung, AICP, Deputy City Manager *SD*
THROUGH: Glen Van Nimwegen, AICP, Community Development Director *GN*
THROUGH: Chris Jacques, AICP, Planning Manager *CJ*
PREPARED BY: Ed Boik, Planner *EB*

SUBJECT: CU 08-13, Fry's Gas Station - APPEAL
Reverse, affirm or modify the Planning and Zoning Commission's decision to deny a Conditional Use Permit for a Fry's gas station on property zoned Intermediate Commercial (C-2) District. The subject property is generally located south of the southwest corner of Deer Valley Road and 83rd Avenue.

REQUEST:

The Mayor and Council make a final determination to reverse, affirm or modify the Planning and Zoning Commission's decision to deny a Conditional Use Permit for a Fry's gas station on property zoned Intermediate Commercial (C-2) District. The subject property is generally located south of the southwest corner of Deer Valley Road and 83rd Avenue.

In accordance with Section 14-39-10.H of the Zoning Code, the applicant filed a valid appeal (Exhibit A) of the Planning and Zoning Commission's decision to deny the Conditional Use Permit.

AUTHORITY AND PROCEDURE:

Pursuant to Section 14-39-10.H any member of the public, including the applicant, may appeal a decision of the Planning and Zoning Commission to the City Council. The City Council shall base its decision on the written findings previously issued by the Planning and Zoning Commission, applicable law, the review criteria stipulated in Section 14-39-10 of the Zoning Ordinance, and guidelines promulgated by the Department.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

If the City Council reverses or modifies the decision of the Commission, the Council shall direct the City Attorney to prepare written findings setting for the basis for the reversal or modification.

CONDITIONAL USE PERMIT DECISION CRITERIA:

Pursuant to Section 14-39-10.E, Conditional Use Permits must be reviewed against the following decision criteria:

1. Whether the use is designated as a permitted Conditional Use within the zoning district in which the property is located.
2. Whether the use meets the locational and development standards provisions, as applicable for the Conditional or Special Use Permit, for the zoning district in which the property is located.
3. Whether the use is consistent with the goals, policies, and future land use map of the General Plan and specific elements of the General Plan and any adopted Specific Plan applicable to the site where the proposed use is located.
4. Whether the use is consistent with documentation and recommendations provided by reviewing City Departments.
5. Whether the use complies with all applicable city codes, standards, and guidelines governing such use.
- 6a. Compliance with specific standards established by the Planning Manager that are designed to mitigate any identified impacts that arise out of the proposed use for which the Conditional Use Permit is sought upon the surrounding area, including residential neighborhoods adjacent to the proposed site as determined by the Planning Manager; and
- 6b. Compliance with specific standards established by the Planning Manager that are designed to ensure compatibility with existing principal permitted uses and conditional uses by addressing the factors set forth in the *Intent* provision of Section 14-39-10.
- 6c. The Planning Manager shall not approve or recommend approval of any Conditional Use Permit unless the Planning Manager has received a Waiver of Proposition 207 from the Owner or Owners of the property that is the subject of the Conditional Use Permit or has determined that the absence of such Waiver of Proposition 207 is consistent with the City's General Plan and Zoning goals and regulations.

SUMMARY:

On February 19, 2009 the Planning and Zoning Commission found that the proposed conditional use permit (CUP) for a gas station did not comply with the review criteria established to allow such use in an Intermediate Commercial (C-2) district. In the course of the hearing, the Commission was presented with information from staff, nearby residents, and the applicant in regards to the appropriateness of the proposed use.

Staff Analysis

In the staff report (Exhibit B) and presentation, staff indicated that the proposed use will meet the criteria established for CUPs because the applicant had proposed appropriate mitigation to address light, noise, odor and other operational impacts which would have negatively affected the adjacent residential properties. Specifically the gas station will be located over 160-feet from the nearest residential property, all lights will be fully shielded, the landscape buffer will be enhanced with additional trees and shrubs, and the underground fuel tanks will be located over 200-feet from the nearest residential property. Additionally, the site complies with all other development requirements and use-specific standards. Staff recommended approval of the request subject to conditions.

Public Testimony

Two nearby residents, both of whom reside at the same address, spoke at the hearing. One resident stated that she was concerned of increased traffic, lighting, and teenagers potentially loitering at the gas station. She concluded that despite the potential impacts of the gas station she preferred it at this location rather than a hypothetical fast-food restaurant. The other resident stated that he felt that there is not enough business to support three gas stations at this corner and that one of them would end up vacant and dilapidated. Both testified that when they purchased their home, they were told a gas station was not in the original plans for this site.

Applicant's Testimony

The petitioner indicated that they believe the project meets and exceeds what is required to be approved. In addition to compliance with the City standards, the petitioner entered into an agreement with the residents adjacent to the project (Sunrise at Desert Mountain Subdivision). The agreement contains an additional 17 stipulations which exceed the scope of the CUP and further restrict signage, lighting, maintenance, and operation of the Fry's Food store and proposed gas station.

Commission's Findings

The Commission indicated concern with the viability of two gas stations being located next to each other on the same side of the street. The Commission surmised that one of the three nearby gas stations could fail and blight the neighborhood. The Commission believed that this would cause traffic issues and potential environmental issues by having many underground tanks in close proximity. It was also noted that there were concerns that the nearby high school students would cause traffic to increase within the parking lots and between uses. Furthermore, the Commission was concerned that young people passing by the proposed gas station would be subject to safety risks from vehicles using the gas station.

Based on the provided information, public testimony and their noted findings, the Commission determined that the proposal did not meet the review criteria for a conditional use permit and voted 3-1 to deny the request.

ATTACHMENT:

- Applicant's appeal request (Exhibit A)
- February 19, 2009 Planning and Zoning Commission Staff Report (Exhibit B)
- February 19, 2009 Planning and Zoning Commission Minutes

SUPPORTING DOCUMENTATION
PERTAINING TO THIS
AGENDA ITEM IS ON FILE IN THE
OFFICE OF THE CITY CLERK